

DEPARTMENT OF STATE REVENUE

Revenue Ruling IT 98-04

July 22, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Income Tax – Statutory Requirements for Indiana State
and County Income Tax Withholding

Authority: IC 6-3-4-8, IC 6-3-1-3.5(a)3, IC 6-3.1-3.5(a)(4), Form WH-4, Departmental
Notice #1

The taxpayer requests the Department to rule on the statutory requirements for Indiana state and county income tax withholding by an employer.

STATEMENT OF FACTS

The taxpayer does business in several states, including the State of Indiana, where it also files annual corporate tax returns. In order to staff its jobs within the State of Indiana, the taxpayer sends its employees to various job sites. Many of those employees are residents of other states. For example, a particular job may be staffed by employees who are residents of Florida.

The taxpayer has historically withheld Indiana income taxes from wages paid to those employees (except those who reside in states that have entered into a reciprocity agreement with Indiana). Moreover, the taxpayer has required that such withholding be computed by reference to the number of exemptions claimed on Internal Revenue Service Form W-4, even though the number of exemptions claimed on the Indiana version of this form (Form WH-4) may be higher than the number claimed on Form W-4. This is based upon an interpretation of Indiana law by the taxpayer's management and on verbal communications (by telephone) with personnel of the Indiana Department of Revenue.

The taxpayer has been threatened by a class action lawsuit, under which the employees at issue seek to have the taxpayer cease or drastically reduce withholding of Indiana income taxes. Many employees have charged that the taxpayer is required to rely on the Indiana Form WH-4, as completed by the employee. The employees charge that this is so, even if Form WH-4 reflects a higher number of exemptions than reported to the Internal Revenue Service on Form W-4 thereby resulting in little or no state income tax withholding. One such employee has received an opinion letter from a certified public accountant located in Kentucky, who states that she called the Indiana Department of Revenue, and was verbally told that reliance on an employee-completed Form WH-4 is mandatory, and that minimal or no withholding is thus permissible, even though based upon an Indiana Form WH-4 that reflects a higher number of exemptions than is reflected on IRS Form W-4.

DISCUSSION

IC 6-3-4-8 provides that an employer is required to deduct and retain (and remit to the Department) from an employee's wages the amount prescribed in withholding instructions issued by the Department. The Department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer (employee) is subject to under IC 6-3.5, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)3 and IC 6-3-1-3.5(a)(4). The Department's withholding instructions (which are in accord with the aforementioned statutory requirements) are found in the "State of Indiana Employee's Withholding Exemption and County Status Certificate" (Form WH-4) and "Departmental Notice #1" (formerly Indiana Information Bulletin #32A). Form WH-4 instructs the employee how to properly calculate the number of exemptions that are permissible for state and county income tax withholding purposes. Departmental Notice #1 instructs the employer on the proper methodology for deducting the correct amount of Indiana state and county income tax from an employee's wages. Both of these documents fail to reference Internal Revenue Service Form W-4 and do not in any way suggest that there is a correlation between the allowable number of exemptions for federal withholding purposes found on Form W-4 and the allowable number of exemptions for state and county withholding purposes found on Form WH-4. Departmental Notice #1 does, however, specifically instruct the employer to begin the calculation of the state and county income tax to be withheld from an employee's wages by locating the number of exemptions the employee has claimed on Form WH-4 on the tax calculation table.

It is clear then, the taxpayer is not to withhold Indiana state and county income tax from its employees based on the number of exemptions claimed on Internal Revenue Service Form W-4, but, rather is required to withhold Indiana state and county income tax based on the number of exemptions claimed on Form WH-4. (It should be noted that the number of exemptions claimed by an employee may be the same on Form W-4 and Form WH-4, however, it is not statutorily dictated that it be so, but, rather is merely coincidental.)

RULING

The Department rules that the taxpayer is required to withhold Indiana state and county income tax from its employees' wages based on the number of exemptions indicated by the employee on Indiana Department of Revenue Form WH-4, rather than based on the number of exemptions indicated on Internal Revenue Service Form W-4.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if the change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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